

LEE COUNTY, IOWA  
CLERK

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

STATE OF IOWA, ex rel., IOWA  
DEPARTMENT OF NATURAL RESOURCES  
(99AG23542),

Plaintiff,

vs.

ROQUETTE AMERICA, INC., a Delaware  
Corporation,

Defendant.

LAW NO. EDEQ4303 (S)

**CONSENT ORDER, JUDGMENT  
AND DECREE**

NOV 2 11:51 AM  
LEE COUNTY, IOWA  
CLERK

NOW on this 21<sup>st</sup> day of November, 2005, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code section 455B.146. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.

2. Defendant Roquette America, Inc. admits, for this action only, the PSD violations regarding Boilers No. 9, 10 and 12 cited within Iowa Administrative Order No. 2003-AQ-04. The defendant states that the acts or omissions giving rise to the alleged PSD and NSPS violations recited herein were not knowingly committed in violation of the law and expressly states that any violations were unintentional. The defendant further states that it has worked in a cooperative and timely manner with the State of Iowa to resolve these issues.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Roquette America, Inc. is assessed a civil penalty of Five Hundred Sixty Thousand and no/100 Dollars (\$560,000.00) for the violations admitted herein. The defendant shall pay said penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payment of the civil penalty and interest shall be made to the Clerk of the Iowa District Court for Lee County.

2. Defendant Roquette America, Inc. is permanently enjoined from violations of 567 Iowa Admin. Code 22.1(1), 22.4, and 40 C.F.R. sections 52.21(i)(1), 52.21(j)(3), 52.21(k)(1), 52.21(k)(2), 52.21(m)(1)(iv), 52.21(n), 52.21(o)(1), and 52.21(o)(2); 567 Iowa Admin. Code sections 23.1(2), 23.1(2)"ccc," and 40 C.F.R. sections 60.42b and 60.45b.

3. For purposes of this Consent Order, Judgment and Decree "new boiler" shall refer to a boiler to be installed by Defendant Roquette America, Inc. at its corn wet milling facility in Keokuk, Iowa, to replace existing Boiler Nos. 9, 10, and 12.

4. Defendant Roquette America, Inc. shall within thirty (30) days of signing this Consent Order, Judgment and Decree or within thirty (30) days of receiving written comments on the draft application from the IDNR, whichever is later, submit to IDNR a complete PSD permit application for the new boiler. The permit application shall include all information required by 567 Iowa Admin. Code 22.4 and 40 C.F.R. sections 52.21(j) through (r).

5. Defendant Roquette America, Inc. shall no later than thirty (30) days after receipt of a written request from IDNR, provide IDNR with additional information requested related to the PSD permit application for the new boiler.

6. Defendant Roquette America, Inc. shall, within fifteen (15) days of the start of construction of the new boiler, provide IDNR with written notice of the date construction commenced. "Commence" shall have the same meaning as defined in 40 C.F.R. sections 52.21(b)(9)(i) and (ii).

7. The obligations established in paragraphs 4 through 6, above, shall apply unless and until Roquette provides the IDNR with written notice of its decision not to install a new boiler to replace existing Boiler Nos. 9, 10, and 12.

8. Defendant Roquette America, Inc. shall shut down and permanently disable Boiler No. 9 on or before January 31, 2008.

9. Defendant Roquette America, Inc. shall shut down and permanently disable Boiler No. 10 on or before January 31, 2008.

10. Defendant Roquette America, Inc. shall shut down and permanently disable Boiler No. 12 on or before January 31, 2008.

11. The obligations established in paragraphs 8 through 10, above, shall apply regardless of Roquette's decision on whether to install a new boiler to replace existing Boiler Nos. 9, 10 and 12.

12. In the event that Defendant Roquette America, Inc. decides to replace Boiler Nos. 9, 10, and 12, with a new boiler, the new boiler shall apply the Best Available Control Technology (BACT) for each pollutant for which a significant net emissions increase would occur, and comply with New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants requirements. Only contemporaneous sulfur dioxide (SO<sub>2</sub>) emission reductions associated with the shutdown of Boiler Nos. 9, 10, and 12, which exceed the emissions that

would have been controlled by the timely application of BACT, may be considered in the New Source Review (NSR) applicability determination during the new boiler permit application development and review or in the NSR applicability determination for future contemporaneous projects. The contemporaneous carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM and PM<sub>10</sub>), volatile organic compounds (VOCs), and lead (Pb) emission reductions associated with the shutdown of Boiler Nos. 9, 10, and 12, may be considered in the New Source Review (NSR) applicability determination during the new boiler permit application development and review or in the NSR applicability determination for future contemporaneous projects.

13. Defendant Roquette America, Inc. shall pay to the Clerk of the Iowa District Court for Lee County the following stipulated civil penalties for violations of the compliance schedule contained in paragraphs 4 through 6 and 8 through 10, above:

(a) \$10,000 per day of each violation of paragraphs 8, 9, and 10, above; and

(b) \$1,000 per day of each violation of paragraphs 4, 5, and 6, above.

Payment of these stipulated civil penalties shall be made no later than ten (10) days after receipt of a written demand from IDNR for payment, or after a court order requiring such payment, whichever is later. Payment of these stipulated civil penalties shall not relieve Roquette America, Inc. from any obligations established by this Consent Order, Judgment and Decree or other provision of law. Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources may at any time, in lieu of collecting a particular stipulated civil penalty provided for herein, seek judicial assessment of full civil penalties pursuant to Iowa Code section 455B.146.

14. Force Majeure: If Roquette is unable to meet any of the deadlines set forth in this order, Roquette shall provide notice to the Plaintiff within ten (10) business days specifying the

delayed event, the cause of the delay, its possible duration, Roquette's efforts to remedy the situation, and the expected effect of the delay upon the schedule contained in this order.

Roquette shall adopt all reasonable measures to avoid or minimize such delays. Failure by Roquette to provide notice to the Plaintiff of an event which causes or may cause a delay or impediment to performance shall render this paragraph voidable by Plaintiff as to the specific event for which Roquette has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved. The Plaintiff shall notify Roquette in writing regarding Roquette's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days after receipt. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Roquette, and that Roquette could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Roquette shall not be liable for any stipulated penalties for the period of any such delay. If the Plaintiff does not accept Roquette's claim that a delay or impediment to performance is caused by a force majeure event, to avoid payment of stipulated penalties, Roquette must submit the matter to this Court for resolution within twenty (20) business days after receiving notice of the Plaintiff's position by filing a petition for determination with this Court. Once Roquette has submitted this matter to this Court, the Plaintiff shall have twenty (20) business days to file its response to said petition. If Roquette submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Roquette, including any entity controlled by Roquette, and that Roquette could not have prevented the delay by the exercise of due diligence, Roquette shall

be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances. Roquette shall bear the burden of proving that any delay of any requirement(s) of this Consent Order, Judgment and Decree was caused by or will be caused by circumstances beyond its control, including any entity controlled by it, and that Roquette could not have prevented the delay by the exercise of due diligence. Roquette shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates. Unanticipated or increased costs or expenses associated with performance of Roquette's obligations under this Consent Order, Judgment and Decree shall not constitute circumstances beyond the control of Roquette, or serve as a basis for an extension of time under this paragraph. However, failure of a permitting authority to issue a necessary permit or other required approval in a timely fashion is an event of Force Majeure provided that Roquette can meet its burden of demonstrating that it has:

- (a) submitted a timely and complete application;
- (b) responded to requests for additional information by the permitted authority in a timely fashion; and
- (c) prosecuted appeals of any disputed terms and conditions imposed by the permitting authority in an expeditious fashion.

15. Dispute Resolution: The dispute resolution procedure provided by this Paragraph shall be available to resolve all disputes arising under this Consent Decree. The dispute resolution procedure required herein shall be invoked by written notice from a party to the Consent Decree to the other party. Notice shall be given, at a minimum, to the Plaintiff and Roquette advising of a dispute pursuant to this Paragraph. The notice shall describe the nature

of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days after the receipt of such notice. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Plaintiff and Roquette. Such period of informal negotiations shall not extend beyond thirty (30) calendar days after the date of the first meeting between representatives of the Plaintiff and Roquette, unless the parties' representatives agree to shorten or extend this period. In the event that the parties are unable to reach agreement during such informal negotiation period, the Plaintiff shall provide Roquette with a written summary of its position regarding the dispute. The position advanced by IDNR shall be considered binding unless, within forty-five (45) calendar days after Roquette's receipt of the written summary of the Plaintiff's position, Roquette files with this Court a petition which describes the nature of the dispute, and includes a statement of Roquette's position and any supporting data, analysis, and documentation relied on by Roquette. The Plaintiff shall respond to the petition within forty-five (45) calendar days of filing. Roquette shall comply with IDNR's final position during the dispute resolution process unless otherwise ordered by the Court. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods may be shortened upon motion of one of the parties to the dispute. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this paragraph or the parties' inability to reach agreement. The final position of the Plaintiff shall be upheld by the Court if supported by substantial evidence in the record as identified and agreed to by all the Parties. As part of the resolution of any dispute submitted to dispute resolution, the

parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Roquette shall be liable for stipulated penalties for its failure to complete the work in accordance with the extended or modified schedule.

16. Resolution of Claims: Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of and shall resolve all past civil and administrative liability of Defendant Roquette America to the Plaintiff for the violations alleged in the Plaintiffs' Petition at Law under the following statutory and regulatory provisions:

- (a) *New Source Performance Standards*. NSPS, 40 C.F.R. Part 60, including Subpart Db;
- (b) *Prevention of Significant Deterioration*. PSD requirements at Part C of the Act and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and the SIP provisions which incorporate and implement the above-listed federal statutes and regulations;
- (c) *State Implementation Plan Requirements*. SIP requirements for permitting of the construction and operation of new and modified stationary sources, requirements relating to emission limits in permits issued for such construction and operation, and requirements for payment of fees based on quantity of emissions; and
- (d) *State Regulations not included within the State Implementation Plan Requirements*. Any state regulations that may not be incorporated into the state implementation plan.

17. Termination: This Consent Decree shall be subject to termination upon motion by any party after Roquette has satisfied all requirements of this Consent Decree. At such time, if Roquette believes that it is in compliance with the requirements of this Consent Decree, and has paid the civil penalty and any stipulated penalties required by this Consent Decree, then



Roquette shall so certify in writing to the Plaintiff, and unless the Plaintiff objects in writing with specific reasons within forty-five (45) days after receipt of the certification, the Court shall order that this Consent Decree be terminated on Roquette's motion. If the Plaintiff objects to Roquette's certification, then the matter shall be submitted to the Court for resolution under paragraph 15 ("Dispute Resolution") of this Consent Decree. In such case, Roquette shall bear the burden of proving that this Consent Decree should be terminated.

18. Modification: This consent order may be amended as necessary to accommodate changed circumstances. The consent order may be amended by the written agreement of the parties or by Order of the Court.

19. For purposes of implementation of this Consent Order, Judgment and Decree, all technical submittals, documents or correspondence shall be sent to the following:

Christopher A. Roling  
Senior Environmental Engineer  
Iowa Department of Natural Resources  
7900 Hickman Road  
Urbandale, IA 50322

David W. Thompson, P.E.  
Thompson Environmental Consultants  
4950 Pleasant Street  
West Des Moines, IA 50266-1783

John V. Fratus  
Director - Regulatory Affairs  
Roquette America, Inc.  
1417 Exchange Street  
Keokuk, IA 52632-6647

All legal notices, documents or correspondence shall be sent to the following:

David R. Sheridan  
Assistant Attorney General  
Environmental Law Division  
Lucas State Office Building  
321 E. 12th Street, Room 018  
Des Moines, IA 50319

Robert J. Lambrechts, Esq.  
Lathrop & Gage, L.C.  
2345 Grand Blvd., Suite 2400  
Kansas City, MO 64108-2612

Anne Preziosi, Attorney  
Iowa Department of Natural Resources  
7900 Hickman Road  
Urbandale, IA 50322


Eric Lindquist, Esq.  
Fox, Horan & Camerini, LLP  
825 Third Avenue, 11th Floor  
New York, NY 10022

A party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

20. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

21. The costs of this action are taxed to the defendant in the amount of \$ 100.00

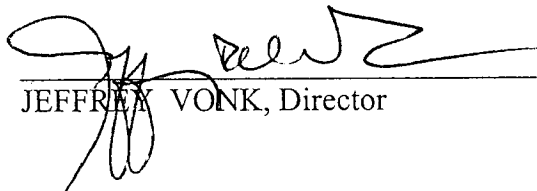
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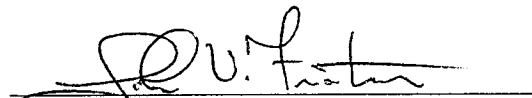
  
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JUDGE, Eighth Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF NATURAL  
RESOURCES

ROQUETTE AMERICA, INC.

  
\_\_\_\_\_  
JEFFREY VONK, Director

  
\_\_\_\_\_  
JOHN V. FRATUS  
Director - Regulatory Affairs

THOMAS J. MILLER  
Attorney General of Iowa



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DAVID R. SHERIDAN, PK1000107

Assistant Attorney General

321 E. 12<sup>th</sup> St., Room 018

Des Moines, Iowa 50319

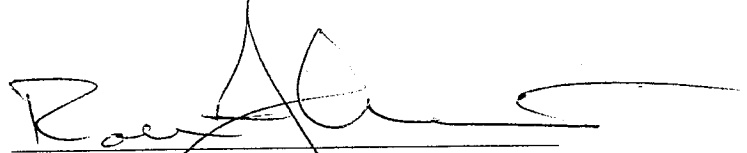
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ATTORNEYS FOR PLAINTIFF

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Fax: (816) 292-2001

ATTORNEYS FOR DEFENDANT